

Justice Committee

Police and Fire Reform (Scotland) Bill

Written submission from British Transport Police and British Transport Police Authority

This is a formal response by the British Transport Police (“the BTP”) and the British Transport Police Authority (“BTPA”) to the Justice Committee of the Scottish Parliament (“the Committee”) call for evidence in relation to the Police & Fire Reform (Scotland) Bill 2012 (“the Bill”).

The fundamental purpose of the Bill is to amalgamate the existing eight Scottish police forces into one force to be known as the Police Service of Scotland (“PSS”).

BTP and BTPA have a number of concerns in relation to certain aspects of the Bill which may impact on their ability to discharge their duties and wider functions in Scotland. Those concerns are noted below.

In this response, references to a provision of or effect of the Bill are (save as expressly stated) to the terms of the Bill as introduced to the Scottish Parliament and as if the Bill were enacted in those terms.

History of BTP and BTPA

BTP is a national police force in Great Britain. That fact and the specialist nature of its policing activities, being focused upon railways and railway facilities and certain tram schemes make BTP a unique and specialist police force.

General provision was first made in 1858 for the appointment of constables to police the construction of canals and railways. Therefore, railway policing has been distinct from general policing arrangements throughout Great Britain for over 150 years.

The current legal basis for BTP’s existence is Section 20 of the Railways & Transport Safety Act 2003 (“the 2003 Act”) which came into force on 1 July 2004. The 2003 Act at Section 31 gives BTP jurisdiction on the railway and purposes connected to, occurring on or in relation to a railway in Great Britain.

BTPA was established under Section 18 of the 2003 Act and is, by virtue of Section 20 of the 2003 Act, under a statutory obligation to secure the maintenance of an efficient and effective police force (a) to be known as the British Transport Police Force, and (b) to police the railways. The Authority is also under a statutory duty to defray the expenses of BTP.

Scotland Act

BTP understands that as rail transport safety is a reserved matter by virtue of Section E (II) of Schedule 5 to the Scotland Act 1998 (“the 1998 Act”), it may be that a Section 104 Order under the 1998 Act may be required.

An Act of the Scottish Parliament may require consequential provision to be made to the law relating to reserved matters or the law elsewhere in the UK. The legislative competence of the Scottish Parliament to make such consequential provision is extremely limited. Section 104 of the 1998 Act enables Her Majesty or a Minister of the Crown by subordinate legislation to make provision which is considered necessary or expedient in consequence of any provision made by or under an Act of the Scottish Parliament or by subordinate legislation.

BTP and BTPA concerns

Issue 1: Temporary Service and New Oath

The Bill will, by virtue of Section 10, introduce a new oath which all PSS officers will be required to take before a Sheriff or Justice of the Peace. The Bill states that any officer (which would include an officer of the BTP) engaged in “temporary service” with the PSS must take the new oath. Section 15 of the Bill which makes provision for “temporary service” with the PSS, does not define “temporary service” nor is such defined elsewhere in the Bill.

BTP and BTPA are not clear on the implications this would have for their officers, for example officers of BTP Public Order Units based in England who may be called upon at short notice to render assistance to PSS officers. This is currently a regular occurrence with the Scottish forces. BTP are thus concerned about the lack of clarity regarding “temporary service” and how this will impact on their operations.

BTP and BTPA request that the Committee seeks clarification from the Scottish Government as to the intended meaning of “temporary service” and that the Bill is amended so that it is clear in exactly what circumstances a BTP constable will be considered to be engaged in “temporary service” with the PSS and required to take the new oath.

This issue is linked closely to issue 2 outlined below in relation to mutual aid and collaboration arrangements.

Section 24(4) of the 2003 Act currently refers to constables of the BTP in Scotland taking the oath provided for in Section 16 of the Police (Scotland) Act 1967 (“the 1967 Act”) Similarly, Section 25(4) of the 2003 Act refers to Special Constables of BTP taking the oath referred to in Section 16 of the 1967 Act. Section 16 of the 1967 Act will be repealed by the Bill.

BTP and BTPA would welcome clarification as to whether or not all BTP constables in Scotland (and not just officers engaged in “temporary service”) will be required to take the new oath in the Bill. The wording of the oath is different to the wording of the oath currently taken by BTP officers and thus may have implications for BTP officers engaged in “temporary service”.

It seems to BTP and BTPA that an amendment of the 2003 Act will be necessary to give effect to the Bill’s provision in relation to oaths to be taken by BTP constables/special constables.

Issue 2: Lack of Provisions re Mutual Aid and Collaboration

The Bill will repeal the existing mutual aid and collaboration provisions in the 1967 Act and (assuming a Section 104 Order is made) the 2003 Act.

The Bill does not cover how mutual aid and collaboration between BTP and PSS are to be provided for in the future. Otherwise it appears that a means of it establishing rules/regulations on mutual aid and collaboration between the PSS and BTP will be repealed. Accordingly, BTP and BTPA wish a formal undertaking from the Scottish Ministers that there will be provision for such, whether by way of a formal amendment to the Bill supplemented by a Section 104 Order or otherwise.

It appears to BTP and BTPA that the drafting of the Bill, being focussed on the amalgamation of Scottish forces, has overlooked the possibility of mutual aid being provided by or to BTP in the future. BTP and BTPA would suggest that existing mutual aid and collaboration provisions be retained subject to substitution of PSS for reference to existing Scottish police forces rather than repealed.

Issue 3: Consequences of amendment to the definition of constable

The Bill will change the definition of “constable” contained in the 1967 Act and in the Interpretation and Legislative Reform (Scotland) Act 2010 (“the 2010 Act”) from “a constable of a police force” to “a constable of the Police Service of Scotland”.

BTP note that in terms of Section 31 of the 2003 Act a constable of BTP, where he has jurisdiction, has all the powers and privileges of a constable. In light of the terms of the Bill, provision will in future fall to be interpreted in Scotland as reference to the powers and privileges of a PSS constable.

The duties of a constable of the PSS are being re-stated in the Bill. As far as BTP and BTPA have been able to determine the duties are largely a restatement of the duties set out in the 1967 Act.

BTP and BTPA wish clarification as to whether the restating of duties will impact on the duties and privileges of a BTP constable and also as to whether or not there will be a definition of “privileges of a constable”. BTP and BTPA are uncertain as to exactly what it is intended a “privilege” includes.

Issue 4: Timing

In so far as a Section 104 Order may be required to amend the 2003 Act in consequences of the enactment of the Bill, BTPA and BTP wish to highlight that the new Act and consequential order should come into force at the same time.

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